IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5417 of 1993

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

YOGESH CHANDRA C PATEL

Versus

STATE OF GUJARAT & Anr.

Appearance:

1. Special Civil Application No. 5417 of 1993

MR DIPAK C RAVAL for MR ANAND for Petitioner

MR MITA PANCHAL AGP for Respondents

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 08/12/2004

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner, an Assistant Geologist in the State Government, challenges the Government Notification dated 26th May, 1993 reverting the petitioner to the post of Geological Assistant.

The petitioner, then a Geological Assistant in Class-III service, had preferred Special Civil Application No. 87 of 1992 before this Court. The petitioner had claimed promotion to the post of Assistant Geologist in Class-II service and had challenged his supersession pursuant to the select list prepared in the month of November, 1991. The said petition was disposed off by Order dated 18th February, 1992 [Coram : R.A Mehta, J.]. On behalf of the State Government, it was admitted that the petitioner's case for such promotion was not considered by the Departmental Promotion Committee in the month of November, 1991. The petitioner, however, claimed that he should have been promoted to Class-II service in the month of February, 1991. Consequently, the Court directed that the departmental promotion committee shall consider the question of promotion of the petitioner and also the question of granting him promotion from the month of February, 1991.

Thereafter, the petitioner was promoted as Assistant Geologist by Government Notification dated 16th July, 1992. The said promotion was temporary for a period of four months. The said temporary promotion continued until the month of May, 1993. By Government Notification dated 25th May, 1993, the petitioner was reverted to his substantive post of Geological Assistant. Pursuant to the said Notification, by impugned order dated 26th May, 1993, the petitioner was relieved from the post of Assistant Geologist.

Learned advocate Mr. Raval has appeared for the petitioner. He has submitted that the petitioner is a Scheduled Tribe candidate. The petitioner was, therefore, entitled to accelerated promotion on the post reserved for Scheduled Tribes. Amongst the Assistant Geologists then in service, not a single candidate belonged to Scheduled Tribe. Thus, the petitioner could not have been reverted to his substantive post of Geological Assistant. He has also submitted that pursuant to the above referred direction dated 18th February, 1992, the petitioner's case for promotion was considered and he was placed at serial no.1 in the select list of ST candidates. The petitioner, therefore, had a preferential right to promotion as Assistant Geologist.

The petition is contested by the State Government. It is submitted that the departmental promotion committee had met in the month of November, 1990. At the relevant time, the petitioner had not passed the requisite departmental examination. His case was, therefore, not placed for consideration by the departmental promotion committee [hereinafter referred to as, "the Committee"]. In the meeting of the said committee held in the month of November, 1991, the petitioner's case was not considered as he had not completed seven years' service in Class-III Service, as required under sub-rule 2 (b) of Rule 11-A of the Gujarat Civil Services [Classification & Recruitment] (General) Rules, 1967. The petitioner's case for such promotion was considered by the Committee in its meeting held in June, 1992. In the select list prepared pursuant to the said selection procedure, the petitioner was placed at serial no. 17. As the person selected at serial no.2-one Shri K.S Patel had forgone his right to promotion, by Notification dated 16th July, 1992, five selected candidates were promoted as Assistant Geologist. The said five candidates were the persons selected at serial nos. 1, 3, 4 & 5 and the petitioner who was selected and placed at serial no. 17. Thus, the petitioner was given promotion out of turn on ad hoc basis. Now, with a view to regularizing the promotion of the persons selected at serial nos. 6 to 16, the petitioner was required to be reverted to his substantive post as Geological Assistant in Class-III service.

There is nothing on the record to indicate that any of the posts in the cadre of Assistant Geologist was reserved for Scheduled Tribe candidate or whether the petitioner had a claim for such promotion. Besides, pending this petition, pursuant to the interim order made by this Court, the petitioner has been continued on the higher post of Assistant Geologist. In that view of the matter, it would be in the interest of justice to regularize the promotion of the petitioner, keeping in view his placement on the select list and his claim as a Scheduled Tribe candidate and the roster point.

In the result, the petition is partly allowed. The impugned order of reversion of the petitioner to the post of Geological Assistant is quashed and set-aside. The respondent-State Government is directed to consider regularization of promotion of the petitioner as Geological Assistant in Class-II service keeping in view his selection by the departmental promotion committee made in the month of June, 1992 and his claim for

accelerated promotion as Scheduled Tribe candidate under the reservation policy of the State Government. Such exercise shall be completed within three months from today. The decision of the State Government shall be final and binding to the petitioner. Rule is made absolute to the above extent. There shall be no order as to costs. The registry shall send the writ forthwith.

[Miss R.M Doshit, J.]

Prakash*